

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation and
Petition to Revoke Probation Against:**)
)

STEVEN LAWRENCE KATZ, M.D.)

Case No. 800-2018-042641

**Physician's and Surgeon's
Certificate No. G71332**)
)

OAH No. 2018110385

Respondent)
)
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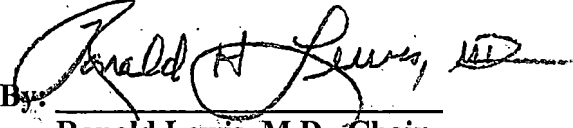
DECISION

**The attached Proposed Decision is hereby adopted as the Decision and
Order of the Medical Board of California, Department of Consumer Affairs,
State of California.**

This Decision shall become effective at 5:00 p.m. on February 22, 2019:

IT IS SO ORDERED January 24, 2019.

MEDICAL BOARD OF CALIFORNIA

By: 

**Ronald Lewis, M.D., Chair
Panel A**

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In the Matter of the Accusation and Petition
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STEVEN LAWRENCE KATZ, M.D.,

Physician's and Surgeon's Certificate
No. G 71332

Respondent.

Case No. 800-2018-042641

OAH No. 2018110385

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on December 18 and 19, 2018, in Oakland, California.

Supervising Deputy Attorney General Jane Zack Simon and Deputy Attorney General Lawrence Mercer represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California, Department of Consumer Affairs.

Lindsay M. Johnson, Attorney at Law, represented respondent Steven Lawrence Katz, M.D., who was present throughout the administrative hearing.

The matter was submitted for decision on December 19, 2018.

FACTUAL FINDINGS

Introduction

1. Complainant Kimberly Kirchmeyer is the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs. She brought the accusation and petition to revoke probation solely in her official capacity.

2. On May 13, 1991, the Board issued Physician's and Surgeon's Certificate No. G 71332 to Steven Lawrence Katz, M.D. (respondent). The certificate is renewed and current with an expiration date of November 30, 2020.

Disciplinary History

3. In September 2004, the Executive Director of the Board issued an accusation against respondent alleging that cause existed to revoke his certificate pursuant to Business and Professions Code sections 2234, subdivisions (b) and (c), 2261 and 2262 for gross negligence, dishonesty, false statements and false medical records. Following a hearing in January 2005, respondent's license was revoked, effective April 27, 2005. The Board found that respondent was grossly negligent for failing to advise two patients of a medical error, for actively concealing the error from the patients, and for failing to obtain their informed consent to his continued medical care; that respondent altered or modified patient medical records, or created false records, with fraudulent intent; and that his actions constituted dishonesty and corruption.

The underlying circumstances as described in the Board's decision were as follows:

Respondent specialized in reproductive endocrinology and infertility (REI). On June 15, 2000, respondent mistakenly transferred three of Patient D.B.'s fresh embryos into Patient S.B. Within 10 minutes, respondent learned of the mistake. He decided not to inform Patient S.B. of the error and instead gave Patient S.B. four or five birth control pills as a "morning after pill" in an attempt to prevent her from becoming pregnant. Respondent did not document the transfer error in Patient S.B.'s medical records.

Patient D.B. was scheduled for the transfer of three of her fresh embryos just a half hour after S.B.'s transfer. Respondent did not tell Patient D.B. that her fresh embryos had mistakenly been implanted in Patient S.B. Because her fresh embryos were no longer available, respondent instead implanted three of Patient D.B.'s stored frozen embryos. He did not tell the patient he had done this. Respondent did not document in Patient D.B.'s medical records the implantation of frozen, rather than fresh, embryos.

Respondent subsequently engaged in a cover-up of his error, which included misleading his office staff about what had occurred, which continued until December 2001, 10 months after Patient S.B. had given birth to a boy and Patient D.B., to a girl. Respondent finally admitted to the patients what had happened after the Board began an investigation and contacted Patient S.B., who then called respondent with her concerns. Patient D.B. and her husband, regarding the boy as their own son, began a costly legal battle with Patient S.B. to resolve their mutual claims to the child. Patient D.B.'s husband was granted visitation rights with the boy. Patient D.B. and her husband moved from Del Norte County to the San Francisco area to be closer to the boy. This resulted in financial and other hardships.

4. Respondent filed a petition for reinstatement of his certificate on June 18, 2008. Following a hearing in November 2009, the Board concluded that respondent had not

satisfied his burden of proving rehabilitation. The Board was disturbed by the length of time that had elapsed between revocation of respondent's certificate and his first acts of rehabilitation (psychotherapy and ethics course) addressing his lengthy course of concealment of his error. The Board concluded: "Given the severity of [respondent's] misconduct, more time may be required to establish rehabilitation, including gaining greater insight into why [respondent] engaged in a pattern of dishonesty."

5. On July 19, 2013, respondent filed a second petition for reinstatement. Following a hearing, the Board granted the petition, reinstating respondent's certificate effective April 9, 2015; the certificate was immediately revoked, the revocation was stayed for a period of five years upon various terms and conditions.

The 2015 Decision contains a finding that in order to address the Board's concerns, respondent had expanded the scope of his community service and engaged in further therapy to gain even more insight into his dishonest behavior. When asked what respondent would say to assure the Board he would not engage in repeated conduct of the type that resulted in revocation of his certificate, respondent had stated, "I'm not a stupid man," and pointed out that he had "had more than a decade," to try and understand "why I made the decisions I did and how I can avoid making them in the future." Respondent reported that he had gained insight through therapy that would guide his future conduct, and that he had a network of therapists and colleagues upon whom he could rely if he had doubts about his course of action.

6. On September 25, 2018, the current accusation and petition to revoke respondent's probation was filed, alleging that respondent had engaged in unprofessional conduct and dishonesty, and violated his probation by failing to practice medicine while on probation. Respondent filed a notice of defense and this hearing followed.

Respondent's Performance on Probation

7. On April 14, 2015, Probation Inspector Arlene C. Caballero was assigned as respondent's probation monitor. Caballero testified with candor and credibility at hearing. She met with respondent on April 29, 2015, to review the Board's Decision; they went over each probation term and she answered any questions respondent had concerning his obligations.

8. Condition No. 1 requires that respondent enroll in a Clinical Training Program within 60 days and prior to resuming practice; he was enrolled by June 8, 2015, at the University of California, San Diego (UCSD) Physician Assessment and Clinical Education program (PACE). Respondent completed Phase I as of September 14, 2015. He completed Phase II on January 27, 2016, with recommendations that he complete double the required amount of continuing medical education (CME) credits specific to his field for the current year; and thereafter CME should be specific to REI. PACE also recommended that respondent complete the In Vitro Fertilization and Embryo Transfer CME course at UCSD,

and that respondent work closely with a practice monitor to ensure he is practicing within the standard of care.

9. Condition No. 2 requires that respondent enroll in an approved ethics course no later than June 9, 2015; he enrolled in May 2015, and completed the course on May 17, 2015. Respondent completed the six and 12-month follow-ups by June 1, 2016.

10. Condition No. 3 requires that respondent undergo a psychiatric evaluation. On May 27, 2015, Caballero received a report from Suma Gona, M.D., who found respondent to be fit to practice medicine safely.

11. Caballero advised respondent that he was prohibited from engaging in solo practice or from supervising physician assistants, that he was required to submit quarterly declarations to the Board, and had to be available in person for interviews at his place of business or at the probation office, with or without prior notice.

12. Caballero also discussed with respondent the requirements of Condition No. 12, which states in pertinent part:

[Respondent] shall notify the board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of [respondent's] return to practice. Non-practice is defined as any period of time [respondent] is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052^[1] for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the board. All time spent in an intensive training program which has been approved by the board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or under federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A board-ordered suspension of practice shall not be considered as a period of non-practice.

¹ Business and Professions Code section 2051 authorizes a certificate holder to use drugs or devices, to sever or penetrate the tissues of human beings, and to use any and all other methods in the treatment of diseases, injuries, deformities, and other physical and mental conditions. Section 2052 makes it a misdemeanor to practice medicine, including treating the sick or diagnosing, treating, operating for or prescribing for any ailment, blemish, deformity, disease, disfigurement, disorder, injury or other physical or mental condition, without a certificate.

In the event [respondent's] period of non-practice while on probation exceeds 18 calendar months, [respondent] shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

[Respondent's] period of non-practice while on probation shall not exceed two years.

13. Caballero advised respondent that he was required to nominate three physicians to serve as practice monitors when resuming the practice of medicine.

14. After completing PACE in January 2016, respondent began looking for work. Between May and November 2016, respondent advised Caballero was unable to locate a position in an REI practice group. Caballero recommended that respondent broaden his search outside of the Bay Area, including underserved areas where groups are more likely to accept a physician on probation. She also recommended that he look for a position as a gynecologist, rather than limiting his search to an REI position. Respondent was reluctant to work as a gynecologist, although he is trained as a gynecologist and PACE had found him competent in this area.

15. Later, respondent advised Caballero that he was considering looking for a position out of state; he understood that in order remain in compliance with his probation terms, he would need to obtain a probationary license in another state.

16. On February 15, 2017, Caballero and respondent met to discuss his progress on probation. Caballero reminded respondent that he had not practiced in over a year, and if he did not practice within 18 months, he would need to repeat PACE, which costs approximately \$18,000.

They met again on May 17, 2017, at which point Caballero reinforced the importance of returning to practice; she advised respondent that if he was unable to locate a position by June 27, 2017,² he would be required to repeat PACE.

17. In May or June, 2017, respondent contacted a former colleague, urologist Patrick Bennett, M.D. Dr. Bennett and respondent had shared patients occasionally before respondent's license was revoked, and they resided in the same community. Dr. Bennett had read about respondent's license revocation in 2005. Respondent told Dr. Bennett that he was trying to restore his practice and was required to be in a medical environment. Respondent asked if he could come observe Dr. Bennett in his urology practice.

² Actually, 18 months after January 26, 2016, would be July 26, 2017.

It was not uncommon for Dr. Bennett to have medical students, nursing students, residents or visiting colleagues observe him in his practice, and he agreed. Dr. Bennett's main practice location is in Greenbrae; he also practices in a Novato satellite location on Monday mornings, where he sees patients between 8:30 a.m. and noon. Dr. Bennett decided that the Novato office, which is less crowded and hectic, would be the best location for respondent to observe his practice.

18. At no time did Dr. Bennett contemplate respondent joining his group urology practice. Dr. Bennett did not offer respondent any compensation; he did not suggest adding him to any insurance plans; he did not familiarize respondent with the group's electronic charting software or give him authorization to access medical records; there was no written contract with respondent; and respondent did not obtain malpractice insurance. Nor was respondent provided with a key to the office. Dr. Bennett understood that respondent was only observing him practice medicine for a limited duration that had not been determined.

Respondent and Dr. Bennett did not discuss the Board's requirements for his reentry into practice; however, Dr. Bennett signed a document acknowledging that he had read the Board's accusation and Decision. It was never Dr. Bennett's intent that he supervise respondent or that respondent would practice medicine at his clinic. Dr. Bennett is a member of a group practice; respondent would need group approval and credentials to join the practice, even for one day, which he did not have.

19. On June 26, 2017, respondent began coming to Dr. Bennett's Novato office to observe Dr. Bennett's patient encounters on Monday mornings. During their time together, Dr. Bennett discussed respondent's job search with him. Respondent's skill set and training were more closely aligned with obstetrics and gynecology than with urology. Dr. Bennett understood that respondent was looking for work as an REI specialist or gynecologist.

20. On July 5, 2017, respondent filed with the Board a Quarterly Report under penalty of perjury. In the report, respondent stated that he had begun to practice at Dr. Bennett's Novato office on June 26, 2017. Respondent reported that he was practicing "right now" only Mondays, from 8:00 a.m. to 1:00 p.m.

21. On July 20, 2017, Caballero sent respondent an email requesting nominations for a practice monitor. On July 26, 2017, respondent nominated Lynn Westphal, M.D. On July 28, 2017, Caballero sent an email message to Dr. Westphal with interview questions in order to determine her eligibility to serve.

22. On August 16, 2017, Caballero met with respondent at Dr. Bennett's Greenbrae office location. Upon her arrival, Caballero asked for respondent, but the receptionist did not know who respondent was, so Caballero asked to speak with Dr. Bennett. She was told that Dr. Bennett was unavailable; as Caballero sat in the waiting room looking for respondent's contact information, respondent walked in the door to the office suite. They sat outside of the office for the interview so as not to disturb the office. Caballero asked

about respondent's involvement in the practice, since Dr. Bennett is a urologist and respondent is an REI specialist. Respondent told Caballero that he assisted male patients with infertility and erectile dysfunction. Respondent also stated that he would only be practicing in Novato and he would not be joining the group practice or charting. Caballero asked that Dr. Bennett provide her with a description of respondent's role in his practice.

23. On August 21, 2017, Caballero spoke with Dr. Westphal over the telephone. Dr. Westphal asked about the responsibilities of a practice monitor. Caballero informed her that she was to review respondent's charts to determine whether he was practicing safely. On the same date, Caballero contacted respondent to again request further information concerning his role in Dr. Bennett's practice.

24. On August 22, 2017, respondent sent an email message to Dr. Bennett attaching a proposed letter to send to Caballero describing respondent's role. Respondent's email message stated in pertinent part:

Please see the attached letter. I kept it simple. Please feel free to edit to your liking. If you could please put on your letterhead and PDF by to me by Friday, I will send it to Inspector Caballero.

The proposed letter stated in pertinent part:

It has been a pleasure having [respondent] seeing patients with me in our Novato office His first day was June 26, 2017 and he sees patients with me each Monday.

The patient response in seeing [respondent] with me has been very positive. He brings an additional viewpoint to our care through his training and experience as a female reproductive specialist. Many of our male patients have infertility, erectile dysfunction and reproductive hormone abnormalities. In addition, we see female patients with urological difficulties that can be influenced by menopausal hormone changes.

I personally have and continue to learn from [respondent]. He has been a pleasure to work with. I and our practice are grateful to have this opportunity with [respondent] as he works back to full time reproductive endocrinology practice.

25. Dr. Bennett was uncomfortable, surprised and disappointed with the wording of the letter respondent proposed. He made numerous edits, and notably referred to the patients as "my patients" not "our patients," and included "my evaluations" and deleted "we see patients." On August 25, 2017, respondent sent an email message to Caballero, attaching the edited letter from Dr. Bennett. The letter stated:

It has been a pleasure having [respondent] seeing patients with me in our Novato office His first day was June 26, 2017 and he sees patients with me each Monday.

Approximately one third of my patients are women, and [respondent] has brought very valuable insights to my evaluations of many of these women based on his training and extensive experience as a female reproductive specialist. On many other occasions [respondent] has contributed valuable recommendations regarding endocrine and reproductive conditions of my male patients.

I look forward to [respondent] continuing to see patients with me as he works back to full time reproductive endocrinology practice.

26. On October 4, 2017, respondent signed a Quarterly Declaration under penalty of perjury. On the declaration, respondent stated that he worked on Mondays for 120 hours per week and 40 hours per month. At hearing, respondent explained that he meant to say that he was working 40 hours per month.

27. Dr. Bennett testified with candor and credibility at hearing. In his opinion, respondent's October 4, 2017 declaration is inaccurate because respondent did not "work" at his office, he observed, and because respondent did not spend 40 hours per month in his office. Dr. Bennett reiterated that respondent did not have any clinical responsibility for, and never treated, Dr. Bennett's patients. The patients were not "shared" patients, they were Dr. Bennett's patients only. Dr. Bennett obtained consent from the patients for respondent to observe; some patients did not consent, in which case, respondent would step out of the room during the visit.

Respondent provided no medical treatment, but on occasion engaged in an unsolicited collegial discussion with Dr. Bennett regarding a fertility issue outside of the presence of the patient; these conversations were not consultations and respondent never acted as a consultant to the practice during the time he was observing. If Dr. Bennett sought a formal consultation, he would ask a specific question of an expert to help solve a problem. A referral to the expert for the consultation would be documented in the chart with a specific billing code for the encounter, and a written report would be filed in the chart; this is a very different process than a casual conversation with an observer. Dr. Bennett was happy to hear respondent's thoughts, but the patient diagnoses were his and he alone was responsible for his patients. Dr. Bennett recalls respondent interacting with a patient on only one occasion, when a patient's mother was in the room and recognized respondent as having facilitated the patient's birth.

Based on his life's work as a physician, Dr. Bennett defines the practice of medicine to include a responsibility to a patient, and an understanding by the patient that the physician

is treating him or her. In Dr. Bennett's opinion, the practice of medicine includes examining a patient, developing a treatment plan and recommendations, and exchanging information with the patient concerning the care recommended. In order to practice medicine, a physician needs a space to practice, insurance, access to charting, a contract with insurance providers and many peripheral elements. Dr. Bennett was very clear with respondent that respondent was not practicing medicine at Dr. Bennett's office; rather, respondent was observing Dr. Bennett practice medicine.

28. Dr. Bennett had no supervisory role over respondent and did not understand the Board's requirements of respondent, which he considered well beyond his obligation. Respondent introduced Dr. Westphal to Dr. Bennett as a physician who would be supervising respondent's return to practice for the Board. He understood that respondent and Dr. Westphal were longtime colleagues. Dr. Bennett made it clear to Dr. Westphal that respondent's role was strictly observational and respondent was not practicing medicine in his office.

29. Caballero remained confused about respondent's role in Dr. Bennett's office. On October 31, 2017, she wrote an email message to respondent requesting a detailed summary of his work with Dr. Bennett. On November 5, 2017, respondent resubmitted the same letter to Caballero he had provided from Dr. Bennett on August 25.

Caballero consulted the Board's medical consultant who helped her draft a letter to respondent dated November 7, 2017. She informed respondent that he had submitted the identical letter, and again requested clarification of the nature of his clinical practice. Caballero requested detailed documentation of the types of evaluations he was performing, and the number of hours of direct patient care, including face-to-face evaluations with treatment recommendations. Caballero sought to confirm that respondent's responsibilities were as a treating physician for patients in Dr. Bennett's office. She also stated that if respondent was not in direct patient contact, he had to describe in detail the specific clinical activities he was performing.

30. On November 10, 2017, respondent sent Caballero an email stating:

I work with Dr. Bennett on Mondays in the Novato office. 40+ hours a month. Most if not all is direct patient care, although time between patients and after is discussion of patient care. We see 51-100 patients per month. By direct patient care, I mean face-to-face patient evaluation and recommendations. Diagnoses and treatment for include male and female reproductive disorders, male and female urinary tract dysfunction, prostate cancer screening and male birth control (vasectomy) etc.

At hearing, Dr. Bennett described respondent's email message as inaccurate because respondent was not involved in direct patient care; he was not present for 40 hours per

month; they did not see 51 to 100 patients per month; and because the message describes Dr. Bennett's activities, not respondent's.

31. On November 10, 2017, respondent also submitted a pre-visit information form to Caballero in which he reported that he was seeing 10 to 12 patients each Monday in the Novato office from 8:00 a.m. to 5:00 p.m.

32. On January 2, 2018, respondent signed a Quarterly Declaration under penalty of perjury and submitted it to Caballero. In the declaration, respondent stated that he was working 40 hours per month on Mondays at Dr. Bennett's office.

33. On January 16, 2018, Dr. Westphal submitted answers to questions posed by Caballero. She stated that she knew respondent because they were in fellowship together, but that they had no family or social relationship. Caballero approved Dr. Westphal to be respondent's practice monitor.

34. On February 20, 2018, respondent sent an email message to Dr. Bennett attaching a proposed letter to be sent from Dr. Westphal to Caballero, and inviting Dr. Bennett to review it. Dr. Bennett responded a few hours later, stating in pertinent part:

Steve, I do not feel comfortable with the term "practicing medicine" as it applies to our situation. This does not accurately describe your role and to state this could place my situation at risk. The patients are not providing consent for you to practice medicine but to observe me doing so.

35. On March 7, 2018, Caballero received a practice monitor report from Dr. Westphal, who stated that respondent saw approximately 50 patients per month with Dr. Bennett, and that Dr. Bennett did all of the charting with respondent present. Dr. Westphal considered Dr. Bennett's charting to be clear and concise, and above the standard of care. Since respondent did not see patients alone or perform the charting, she had no recommendations for improvement for respondent.

After receiving a report from Dr. Westphal indicating that respondent did not chart and was not performing direct patient care, Caballero became concerned. She sought clarification from Dr. Westphal, and advised her that she was to review respondent's charts, not Dr. Bennett's charts. Caballero again consulted with the medical consultant to evaluate Dr. Westphal's claim that respondent was consulting on Dr. Bennett's patients. She learned that if there was a consultation, it would be in writing and in the patient's chart.

36. Caballero decided to make an unannounced visit to Dr. Bennett's office to confirm whether respondent was actually practicing medicine. On Monday morning, March 26, 2018, Caballero conducted an unannounced visit to Dr. Bennett's Novato office. Caballero asked to speak with Dr. Katz, but the receptionist advised her that there was no Dr. Katz at the office. Caballero then asked to speak with Dr. Bennett, and provided her with a

business card. Dr. Bennett came out and walked her to where respondent was located., Caballero asked to speak to Dr. Bennett separately first.

Dr. Bennett informed Caballero that respondent was an observer at his practice and that all of the patients seen were Dr. Bennett's patients. Dr. Bennett also confirmed that only he performed the examinations and the charting. His patients understood that Dr. Bennett was their physician; they had given permission only for respondent to observe the encounters, not for treatment by him. Dr. Bennett also confirmed that respondent did not have privileges at the clinic and was not there for 40 hours each month. Dr. Bennett agreed to confirm what he told Caballero in writing immediately. At hearing, Dr. Bennett described Caballero's demeanor on that day as professional; he did not feel uncomfortable or unsafe based on her demeanor, although he was concerned about the reason for the visit and any misunderstanding with the Board.

37. Caballero then spoke with respondent, who told her that she was not allowed to "show up" at that location. He stated that his patients were waiting and he needed to leave to attend to them. Respondent informed Caballero that he saw patients with Dr. Bennett on Mondays from 8:00 a.m. to noon and saw 12 to 15 patients during that time period. He stated that Dr. Bennett introduced him as a colleague. Caballero asked if he only saw patients for four hours on Mondays, what was he doing for the remainder of the 40 hours per month; respondent did not respond.

38. On March 27, 2018, Dr. Bennett sent an email message and attached letter to Caballero. Dr. Bennett stated in the letter that respondent joined him in his Novato office on Monday mornings to observe his urology practice, similar to a medical or nursing student, or visiting colleague. Dr. Bennett reiterated that he obtained verbal permission from patients for respondent to observe the encounter, but that he alone performs the evaluation and examination, and documents the encounter. Dr. Bennett again clarified that respondent was not practicing medicine at his office and Dr. Bennett was not supervising respondent.

39. Caballero concluded that respondent was in violation of Probation Condition No. 15. She also concluded that respondent had not been honest and forthcoming regarding his role in Dr. Bennett's office, or concerning the number of hours he was there. Caballero also felt that respondent was dishonest with her when he complained during her unannounced visit that his patients were waiting to see him, since he had no patients at the office; the patients were being seen by Dr. Bennett during the interview.

40. On April 4, 2018, Dr. Westphal wrote an email message to Dr. Bennett, stating: "Just checking in. Everything going ok with Steven?" Dr. Bennett responded on April 6, stating in pertinent part:

The Monday before last, March 26, a woman from the Medical Board made an unscheduled visit to my office to speak with me and with Steven. She asked me to describe his 'practice.' I

clarified that this is my medical practice, and that Steven accompanies me to observe and consult in an unofficial, collegial manner. She then met with Steven; he did not share with me the entire content of their meeting, but he seemed a bit shaken by the whole episode. She finally asked me to write a letter to her clarifying his role. I have done this and I have not yet heard back from her.

I am concerned that the folks at the Medical Board may feel that Steven has not been entirely clear with them as to how he is fulfilling whatever criteria they have established. As you and I have discussed earlier, [] you and I are in an awkward position as we each have obligations to our patients and employers that limit the role that Steven can play in our offices.

41. On April 5, 2018, respondent sent an email message to Caballero asking that she resign as his probation monitor. Respondent stated:

I have had discussions with you before about your overly aggressive behavior but you do not seem to care. It is not safe for me or Dr. Westphal or Dr. Bennett.

The role of the probation monitor is to be informative, supportive and protective to the interests of the public. Your professional interaction with me could not be farther from that central mission.

You are not truthful with me. Your aggression toward me, Dr. Westphal and Dr. Bennett is unwarranted. You are verbally abusive and threatening. Most importantly you try to play all of us against each other. Why? Everyone has one goal in mind. The same goal as the medical board. You seem to have a different goal.

On your unannounced site visit on Monday March 26th you stated to me in front of everyone that the reason you were unannounced is because I do not return your emails. It was embarrassing, unprovoked and absolutely false. The email trail shows that I respond quickly and directly. The last email on that trail was from you canceling a meeting. I have told you over and over you are welcome to visit on a Monday. You have always declined, stating it did not fit in your schedule. Instead you came in the office outrageously aggressive and disrupted patient care and left patients waiting in exam rooms waiting without any concern. You prevented me from patients for

approximately one hour. When I asked that we meet later you threatened me saying "are you refusing to be interviewed?"

You are verbally violent and it is not safe.

I have mentioned this to you before but you do not seem to care.

I am happy to discuss further with your supervisor as needed.

Please place me to work with a different probation monitor.

42. On April 5, 2018, Caballero contacted Dr. Westphal to clarify her understanding of respondent's role in Dr. Bennett's office. Dr. Westphal stated that respondent was practicing with Dr. Bennett; she stated that respondent was consulting with Dr. Bennett on patients, which constitutes practicing medicine. Caballero instructed Dr. Westphal that in acting as a practice monitor for respondent, she was to review respondent's charts, not Dr. Bennett's charts. On April 16, 2018, Dr. Westphal submitted a practice monitor report without a chart review. She reported that since respondent was not seeing patients alone and was not documenting the patients' charts, she had no recommendations for improvement.

43. On June 20, 2018, Dr. Westphal submitted another practice monitor report and met for an interview with a Board investigator. Dr. Westphal stated that she had reviewed charts on June 11, 2018, with Dr. Bennett and respondent, during which time they discussed respondent's understanding of Dr. Bennett's patients' medical records. Dr. Westphal concluded that respondent had an excellent understanding of the cases. She stated that Dr. Bennett closely monitored respondent's interactions with the patients and that he was an outstanding mentor providing excellent clinical experience for respondent.

44. On June 20, 2018, Dr. Bennett was interviewed by a Board investigator. Dr. Bennett explained he had known respondent when respondent was in practice and that they had shared five or six patients at that time. Dr. Bennett has no personal or financial relationship with respondent. He reported further that a year prior respondent had contacted him to ask if he could observe Dr. Bennett in practice as part of his rehabilitation or a fulfillment of his Board requirements. Dr. Bennett reiterated that respondent observed him on Monday mornings from 8:30 a.m. to noon, and that respondent did not do any work at his practice and did not provide him with anything at all. Dr. Bennett made clear that respondent had not diagnosed any of his patients and has never provided a treatment plan or any direction to a patient; however, respondent would share his knowledge during a discussion with Dr. Bennett if a fertility question arose. Dr. Bennett also reported that respondent did not provide any written consultations, or anything else that requires a medical license.

Dr. Bennett confirmed that he did not consider what respondent was doing to be "work," and had informed Dr. Westphal very clearly that respondent was just observing and was not involved in direct patient care. On June 11, 2018, Dr. Bennett advised respondent that he was uncomfortable with the situation and asked him not to come to observe unless and until it was cleared by the Board.

45. On June 20, 2018, Dr. Bennett sent an email message to respondent and Dr. Westphal, stating that he had met with a Board investigator that morning; he stated that he would like to hold off on any further communications with them until after the Board investigation had concluded.

46. On June 28, 2018, Caballero interviewed respondent. Respondent informed her that he was still practicing with Dr. Bennett, but had not seen patients on June 18 or 25, 2018. Respondent claimed that he played a role in patient care, however, did not confirm whether he treated patients or simply observed Dr. Bennett. Respondent told Caballero that he was practicing six hours each week with Dr. Bennett, which was close to 40 hours per month. Caballero voiced no objection to respondent observing Dr. Bennett.

47. On June 28, 2018, respondent advised Dr. Bennett that Caballero did not object to him continuing to see patients with Dr. Bennett. Dr. Bennett responded that he would like to know that respondent's time in his office fulfilled a specific probation requirement and requested that respondent obtain a letter from the Board stating that his observations of Dr. Bennett's practice was a necessary and appropriate activity toward respondent resuming his practice. At hearing, Dr. Bennett testified that respondent had crossed a line of precision, truthfulness and transparency, and that he now recognized that he had failed to heed his own concerns.

Respondent's Evidence

48. Respondent is 55 years old. He graduated with honors in research from Cornell University Medical College in 1989. Respondent completed his postgraduate residency training at the Department of Obstetrics and Gynecology and Reproductive Sciences at the University of California, San Francisco (UCSF). Respondent was the chief resident in his last year of residency. From 1993 to June 1995, respondent attended fellowship training in REI at UCSF. Respondent was board certified as an obstetrician and gynecologist and REI specialist.

From June 1997 to May 2005, respondent was an assistant clinical professor at UCSF. From 1996 until 1998, respondent was the Co-Medical Director at California North Bay Fertility Associates in San Francisco. From January 1, 1999, until May 1, 2005, respondent was the founder and Medical Director of Fertility Associates of the Bay Area.

49. Respondent acknowledges that failing to inform his patients that one patient received embryos of another patient was a significant error in judgment. He is aware that all medical errors should be disclosed and that patients have the right to make decisions based on what occurred. After losing his license, respondent took time to reflect on his misconduct and to focus on the malpractice lawsuits and Board hearing. He later decided to use his expertise to open in vitro clinics in metropolitan areas without those services.

50. In January 2009, respondent founded Hawaii Reproductive Center in Honolulu; he sold the facility in 2011. From January 2007 until April 2012, respondent

served as the Chief Executive Officer at IVF Centers of Excellence, LLC. In January 2012, respondent founded the Arizona Reproductive Institute, which he sold in April 2014. From April 2012 until March 2015, respondent served as the Chief Executive Officer of IVF Fertility Group, LLC, a business consultant group focused on the development of in vitro fertilization facilities and programs in underserved metropolitan areas. In March 2015, respondent was employed as the Chief Executive Officer of REI Protect, LLC, a medical malpractice insurance company focused on the needs of fertility physicians and practices.

51. Respondent has attended psychotherapy off and on since his license revocation. He wanted to understand why he did not disclose his error and why he rationalized it. He has been in therapy continuously since 2013 when he and his wife separated. Respondent reports that he tries to be as transparent as possible and to choose friends and professional contacts wisely.

52. Respondent and his wife divorced in 2015; he shared custody of his two children. His daughter is now a senior in college, and his son is a freshman in college. It was important to respondent to remain in Marin County until his youngest child left for college.

53. Respondent seeks to remain licensed because practicing medicine and helping to create families is what he loves to do. He understands that it is a privilege. Respondent considers himself to be a great doctor, and reports having the knowledge and personality to build relationships with patients and to help them reach their goals. Respondent acknowledges that it is important for patients to drive their care and choose what they want to achieve. He has devoted his life to medicine and has lost his specialization due to a "tragic error in 2000," followed by an error in reporting the hours he was working with Dr. Bennett.

54. Respondent submitted several letters of support from colleagues. Angeline N. Beltsos, M.D., Chief Executive Officer of VIOS Fertility Institute, located in Illinois, submitted a letter dated December 8, 2018, in which she recommends respondent without any reservation based on her positive experience purchasing malpractice insurance through REI Protect. Dr. Beltsos believes respondent is honest and has learned from his misconduct.

Keith L. Blauer, M.D., a fertility specialist located in Utah, wrote a letter of recommendation for respondent. Dr. Blauer has worked with respondent through REI Protect. Dr. Blauer reports that in his experience, respondent has acted with professionalism, honesty and integrity. He is aware of respondent's misconduct and of his miscommunication with the Board concerning the hours he has worked on a monthly basis, but strongly recommends that respondent be given another opportunity.

Jeffrey Karp, Pharm.D., of Scottsdale, Arizona, wrote a letter of recommendation for respondent. Dr. Karp has known respondent for five years and considers him to be a well-respected REI specialist. Dr. Karp believes respondent has learned from failing to disclose his error in 2000. He considers respondent to be honest and a man of integrity.

Michael S. Opsahl, M.D., of Washington, wrote a letter of reference concerning his relationship with REI Protect. Dr. Opsahl has found respondent to be helpful and very informed on the topic of insurance protection.

Julie Rash, the Chief Executive Officer of Egg Donor Select, wrote a letter of recommendation dated December 6, 2018. Respondent helped Rash set up Egg Donor Select on a volunteer basis. She is aware of his failure to disclose his medical error in 2000, of the accusation and of respondent's "error" in reporting that he had worked for 40 hours per month. Rash and respondent have spoken every Tuesday morning over the telephone for the past 12 years. Rash reports that respondent's insight and direction have been invaluable in her company's development. Rash considers respondent to be an honorable person and an important asset in the infertility medical community.

Gerald Wilner, M.D., wrote a letter of reference for respondent dated December 3, 2018. Dr. Wilner practices obstetrics and gynecology in Marin County. He has known respondent since 1996. Dr. Wilner is aware of the circumstances that led to respondent's license revocation, and was pleased when his license was reinstated. Dr. Wilner is aware of respondent's difficulty in locating work while on probation. He is impressed that respondent did not give up, but began seeing patients with Dr. Bennett, and worked closely with Dr. Bennett, "helping Dr. Bennett with diagnosis and treatment of his patients."

55. Respondent has been active in Students Rising Above, a program that matches disadvantaged young people with mentors. His mentee recently graduated from a software training program at the University of California at Berkeley.

56. Respondent believes that he has complied with his probation terms in all respects. He has maintained his CME, earning more than 50 hours per year for many years; he has attended the National American Society for Reproductive Conference annually.

57. Respondent sought to return to practice and contacted former colleagues, but received no employment offers because of his probationary license. He contacted the Chair of the Department of Obstetrics and Gynecology at Sutter Hospital in Modesto, who was very interested in respondent developing an in vitro fertilization program there; however, because he did not have an unrestricted license, the hospital would not grant him privileges. He also applied to work in basic gynecology at the Marin Community Center as a volunteer, but again he was not offered a position because he did not have an unrestricted license. Respondent applied for licensure in Arizona; the application was put on hold after the accusation was filed.

58. Respondent concedes that he was dishonest in filing his Quarterly Declarations in that he did not work with Dr. Bennett for 40 hours per month. Respondent testified that he did not try to hide from Caballero that he was working only Monday mornings. Respondent acknowledges that on November 10, 2017, he reported to Caballero that he was seeing patients from 8:00 a.m. to 5:00 p.m. each Monday; he described this statement as an honest

mistake. Respondent testified that he read the question to ask for the hours the clinic was open rather than when he was practicing medicine.

Respondent also considered his hours reading medical journals and consulting with insurance clients while working for his malpractice insurance company, REI Protect, to constitute practicing medicine. He concedes that he did not report that to Caballero. Respondent thinks of himself as an honest person; he feels badly that he put down the wrong number of hours and failed to follow the letter of the law. He states that he has now learned that he needs to be "very, very specific in communicating with the Board."

Respondent's explanations for having repeatedly stated that he was practicing medicine for 40 hours per month were not credible. Respondent was not in Dr. Bennett's office for 40 hours per month and never advised Caballero that the remaining hours were met by reading or working with REI Protect. Respondent's testimony on this point undermined his credibility.

59. Probation Condition No. 12 requires that respondent engage in 40 hours per month of "direct patient care, clinical activity or teaching, or other activity as approved by the Board." Respondent acknowledges that he did not ask Caballero whether observing Dr. Bennett practice medicine satisfied this condition. And, he concedes that he did not: examine any patients; have face-to-face discussions with patients regarding their diagnoses; formulate treatment plans; perform charting; prescribe medications; schedule patients; or provide written consultation reports. He also agrees that he was not a partner in the practice, had no ownership interest in the practice, was not an employee, had no control over the staff, was not credentialed, and was not covered by malpractice insurance, and was not added to the group's third party payer plans. Moreover, respondent was well aware that Dr. Bennett did not consider him to be practicing medicine at his office. Nevertheless, at hearing, respondent continued to assert the indefensible position that he was practicing medicine in Dr. Bennett's office.

60. Dr. Westphal testified at hearing. She has known respondent since they were in their fellowship together at UCSF; they were the only two fellows and developed a close relationship. Dr. Westphal also specializes in REI; she and respondent have a close professional relationship and also see each other at an annual meeting. She was aware of respondent's discipline and of his license reinstatement. Dr. Westphal submitted a letter in support of respondent keeping his license in 2005, testified for respondent at his petition hearing in 2009, and submitted a letter in support of his reinstatement in 2015.

Respondent asked her to serve as his practice monitor and she agreed. Dr. Westphal reviewed the information she received from Caballero concerning her role and answered the questions posed. She understood her role to be to review respondent's clinical practice, confirm that the patients were well cared for, and to evaluate the standard of practice. Dr. Westphal performed the reviews at Dr. Bennett's office or over the telephone. She understood that respondent was seeing patients with Dr. Bennett, which she equated to a

resident's role in a clinic. She went over the patient files which were clearly documented by Dr. Bennett. Respondent appeared to be knowledgeable about the patients.

Dr. Westphal felt it was the Board's responsibility to determine whether respondent was practicing medicine. Dr. Westphal considered her responsibility was to determine whether respondent could practice safely, not whether he was practicing safely. She understood the patients were Dr. Bennett's patients, not respondent's, and the charting was Dr. Bennett's not respondent's. Dr. Westphal considered respondent's role to be more than observing because he discussed the cases with Dr. Bennett. Dr. Westphal's opinion that respondent's role was more than observational and similar to that of a resident was not persuasive.

Ultimate Factual Findings

61. Respondent observed Dr. Bennett practice medicine, which does not constitute practicing medicine. Respondent violated Probation Condition No. 12 by failing to practice medicine within two years of completing PACE.

62. Respondent was dishonest with Caballero when he told her repeatedly that he was practicing medicine, and when he submitted his Quarterly Declarations indicating that he was practicing medicine for 40 hours per month. Respondent's dishonest conduct continued at hearing when he asserted yet again that he was practicing medicine in Dr. Bennett's office.

LEGAL CONCLUSIONS

Introduction

1. The purpose of an administrative proceeding concerning licensure is not to punish the respondent, but rather is "to protect the public from dishonest, immoral, disreputable or incompetent practitioners [citations omitted]." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The goal is the prevention of future harm and the improvement and rehabilitation of the licensee. It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.) While the objective, wherever possible, is to take action that is calculated to aid in the rehabilitation of the licensee, protection of the public is paramount. (Bus. & Prof. Code, § 2001.1.)

2. The instant matter involves both an accusation and a petition to revoke probation. With respect to the accusation, the standard of proof regarding the charging allegations is "clear and convincing." (*Ettinger v. Board of Medical Quality Assurance, supra*, 135 Cal.App.3d at 856; see also *Medical Board of California v. Superior Court (Liskey)* (2003) 111 Cal.App.4th 163, 170-171.) This means the burden rests on complainant to establish the charging allegations by proof that is clear, explicit and unequivocal – so clear as to leave no substantial doubt, and

sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

3. With regard to the petition to revoke probation, the burden of proof is also on complainant; however, the standard of proof is a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441.)

Cause for Discipline: Unprofessional Conduct

4. Business and Professions Code section 2234 authorizes the Board to impose discipline against any licensee who is charged with unprofessional conduct, including an act of dishonesty (subd. (e)). Business and Professions Code section 2261 defines unprofessional conduct to include knowingly making or signing any document directly related to the practice of medicine that falsely represents the existence or nonexistence of a state of facts.

Complainant established by clear and convincing evidence that respondent was dishonest in his communications with his probation monitor, verbally and in writing, by stating that he was practicing medicine, when he was observing another physician practice medicine, as set forth in Factual Findings 18 through 20, 22, 24 through 32, 34, 36 through 39, 44, 59 and 62. Complainant established by clear and convincing evidence that respondent repeatedly misrepresented that he was practicing medicine at least 40 hours per month, when he was observing another physician less than 20 hours per month, as set forth in Factual Findings 26, 27, 30 through 32, 37, 38, 44, 46, 58 and 62. Cause for discipline exists pursuant to Business and Professions Code sections 2234, subdivision (e), and 2261.

Cause to Revoke Probation

5. Complainant established by a preponderance of the evidence that respondent violated Condition No. 12 of his probation in that he has not practiced medicine for at least 40 hours per month since he completed PACE in January 2016. (Factual Findings 61.) Cause to revoke respondent's probation therefore exists.

Disciplinary Considerations

6. Cause for discipline having been established, the issue is the appropriate measure of discipline. To implement the mandates of section 2229, the Board has adopted the Manual of Model Disciplinary Orders and Disciplinary Guidelines (guidelines), 12th Edition. The minimum recommended discipline for a violation of Business and Professions Code section 2234, subdivision (e), is stayed revocation, a one-year suspension, and at least seven years of probation; the maximum is revocation of the license. The minimum recommended discipline for a violation of Business and Professions Code section 2261 is stayed revocation with a 60-day suspension and five years of probation; the maximum is revocation of the license. For probation violations, the guidelines recommend a minimum of

a 30-day suspension, but that revocation of the license should be imposed for repeated similar offenses or a cavalier attitude.

7. Respondent's license was previously revoked for an egregious course of conduct involving dishonesty and concealment resulting in a serious and long lasting impact on his patients. Fifteen years later, respondent was given an opportunity to resume medical practice upon his assurances that he had learned important lessons and would be honest and ethical in all respects. The Board reasonably expected that respondent would go to great lengths to satisfy the probation terms and to cooperate fully and honestly with the Board at every opportunity.

Instead, respondent was untruthful and deceptive with his probation monitor. He repeatedly misrepresented that he was practicing medicine at Dr. Bennett's office and he greatly overstated the number of hours he was in Dr. Bennett's office. He was untruthful and manipulative with Caballero when he told her that her unannounced visit kept "his patients" waiting and indicated that her conduct had been threatening and had made Dr. Bennett feel unsafe. He also misled Dr. Bennett about his probation requirements and he attempted several times to manipulate Dr. Bennett's words to suit his purposes. Finally, respondent testified untruthfully at hearing in attempting to cover up his misconduct.

The purpose of physician discipline by the Board is not penal but to protect the life, health and welfare of the people at large and to set up a plan whereby those who practice medicine will have the qualifications which will prevent, as far as possible, dangers which could result from a lack of honesty and integrity. (*Furnish v. Board of Medical Examiners* (1957) 149 Cal.App.2d 326.) The expression of remorse and the taking of responsibility for past misconduct are relevant in assessing rehabilitation, just as the absence of remorse and the failure to take responsibility are aggravating factors. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940 [fully acknowledging the wrongfulness of one's actions is an essential step towards rehabilitation].) Respondent expressed no remorse at hearing; instead he continued to cling to the untenable position that observing another physician constitutes practicing medicine.

The opinions of character witnesses about respondent's clinical skills are noted; however, their opinions about his character are inconsistent with his prior and current misconduct and his continued denial of the facts. There is more to being a physician than knowledge, technical ability and being well-liked. Honesty and integrity are required in all aspects of the practice of medicine. The relationship between a physician and patient is grounded in the utmost trust and confidence in the physician's honesty and integrity; respondent has once before violated that trust with his patients resulting in devastating consequences. Intentional dishonesty demonstrates a lack of moral character and can indicate unfitness to practice medicine. (*Matanky v. Board of Med. Examiners* (1978) 79 Cal.App.3d 293, 305.) Respondent's repeated dishonesty is inconsistent with the practice of medicine. Public protection requires revocation of respondent's certificate.

ORDER

Physician's and Surgeon's Certificate No. G 71332, issued to Steven Lawrence Katz, M.D., is revoked.

DATED: January 8, 2019

DocuSigned by:

Jill Schlichtmann

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JILL SCHLICHTMANN

Administrative Law Judge

Office of Administrative Hearings

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO 92 PL 25 2018
BY: 2018/11/15 ANALYST

1 disciplinary action was taken against this certificate as follows: On September 21, 2004, a First
2 Amended Accusation was filed, and in a Decision effective April 27, 2005, Respondent's
3 certificate was revoked. The certificate was reinstated by the Board in a Decision effective April
4 9, 2015.

5 JURISDICTION

6 3. This Accusation and Petition to Revoke Probation is brought before the Medical
7 Board of California (Board), Department of Consumer Affairs, under the authority of the
8 following laws. All section references are to the Business and Professions Code unless otherwise
9 indicated.

10 4. Section 2234 of the Code, states:

11 "The board shall take action against any licensee who is charged with unprofessional
12 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
13 limited to, the following:

14 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
15 violation of, or conspiring to violate any provision of this chapter.

16 ...

17 "(e) The commission of any act involving dishonesty or corruption which is substantially
18 related to the qualifications, functions, or duties of a physician and surgeon.

19 5. Section 2261 of the Code states:

20 "Knowingly making or signing any certificate or other document directly or indirectly
21 related to the practice of medicine or podiatry which falsely represents the existence or
22 nonexistence of a state of facts, constitutes unprofessional conduct."

23 STATEMENT OF FACTS

24 6. Respondent's medical specialty is reproductive endocrinology and infertility. In June
25 2000, Respondent mistakenly transferred three of Patient #1's fresh embryos into Patient #2.
26 Within minutes of the mistaken transfer, Respondent learned of the mistake. Rather than inform
27 both of his patients of the medical error, Respondent decided not to inform either of them and
28 instead gave Patient #2 birth control pills in an attempt to prevent her from becoming pregnant.

1 Patient #1 was scheduled for transfer of three of her fresh embryos a short time later. Respondent
2 did not inform Patient #1 of the mistaken transfer or that he had implanted three of Patient #1's
3 embryos into Patient #2. Because Patient #1's fresh embryos were no longer available,
4 Respondent implanted three of Patient #1's stored frozen embryos. Respondent did not inform
5 Patient #1, Respondent did not document the medical error and the steps he took in either Patient
6 #1 or Patient #2's medical records. Instead, he created false records of what transpired.

7 Respondent subsequently engaged in a cover-up of his error, which included misleading
8 and lying to his office staff about what had occurred, falsely billing for procedures he knew he
9 had not performed, altering records, and continuing to deceive his patients in follow up
10 encounters. Both Patient #1 and Patient #2 became pregnant as a result of the June 2000
11 procedures. It was not until some 18 months later, when Respondent learned the Medical Board
12 was investigating, that he disclosed the situation to his patients, and even then, he misrepresented
13 facts to them. By that time, both Patient #1 and Patient #2 had delivered babies.

14 7. The Board's 2005 Decision found that Respondent engaged in "very serious
15 misconduct" and engaged in an elaborate cover-up of wrongdoing designed to protect his own
16 interests above those of his patients. His conduct was characterized as a "prolonged course of
17 dishonest and corrupt behavior, a deliberate decision that Respondent knew to be unethical and
18 dishonest. Respondent's license was revoked in a Decision effective April 27, 2005.

19 8. In 2008, Respondent sought reinstatement of his revoked license. The Board found
20 that more time was required for Respondent to establish rehabilitation, including gaining greater
21 insight into why he engaged in a pattern of dishonesty.

22 9. Respondent filed a new petition for reinstatement in 2013. Relying upon
23 Respondent's declaration of his commitment to honesty and integrity, as well as input from
24 Respondent's therapist who noted that "[h]e works on being honest even in situations where
25 others might duck and cover," and that "he is committed to acting always with integrity" the
26 petition was granted. In a Decision effective April 9, 2015, the certificate was reinstated,
27 immediately revoked, with the revocation stayed, subject to completion of a 5-year term of
28

1 probation. A true and correct copy of the Decision in Case No. 27-2013-233819 is attached as
2 Exhibit A.

3 10. Included in the April 2015 Decision was the standard "Non-practice while on
4 Probation term." That term includes, "In the event petitioner's period of non-practice while on
5 probation exceeds 18 calendar months, petitioner shall successfully complete a clinical training
6 program...Petitioner's period of non-practice while on probation shall not exceed two years."
7 Also included was a requirement that Respondent complete a Professionalism Program.

8 11. Respondent attended a two day Professionalism Program in May 2015. He
9 completed the six and twelve month longitudinal follow-up to the Program in May 2016.
10 According to his self-report to the Program, Respondent said that the Professionalism Program
11 has given him the tools to set up the structure to make very complex decisions through the use of
12 the Decision Model to Resolve Ethical Issues.

13 12. Respondent was not able to find work as a physician during the first two years of his
14 probation. Respondent's assigned Probation Inspector, Arlene Caballero, reminded him on a
15 number of occasions of the consequences of non-practice while on probation.

16 13. On June 26, 2017, Respondent notified Inspector Caballero that he "started seeing
17 patients today" with Dr. B., a male infertility specialist and urologist. Respondent's next
18 Quarterly Declaration, signed by Respondent on July 1, 2017 listed his "primary place of
19 practice" as "with Dr. B." and stated his schedule was "right now 8-1 Mondays."

20 14. In a letter dated August 22, 2017¹, Dr. B stated that Respondent "sees patients with
21 me each Monday. Approximately one third of my patients are women, and Dr. Katz has brought
22 very valuable insights to my evaluations of many of these women based on his training and
23 extensive experience as a female reproductive specialist. On many other occasions Dr. Katz has
24 contributed valuable recommendations regarding endocrine and reproductive conditions of my
25 male patients."

26
27
28 ¹ Dr. B was interviewed on June 20, 2018. He stated that he believes that Respondent
wrote the letter and that he signed it.

1 15. In Quarterly Declarations filed by Respondent between October 2017 and July 2018,
2 Respondent represented, under penalty of perjury, that his "primary place of practice" was "with
3 Dr. B" and listed the address of Dr. B's Novato office. In each Quarterly Declaration Respondent
4 stated that he worked Mondays, 40 hours per month.²

5 16. In October and again in November 2017, Inspector Caballero asked Respondent for a
6 detailed summary of his practice with Dr. B. On November 10, 2017, Respondent replied, "I
7 work with Dr. B on Mondays in the Novato office, 40+ hours a month. Most if not all is direct
8 patient care although time between patients and after is discussion of patient care. We see 51-100
9 patients per month. By direct patient care, I mean face-to-face patient evaluation and
10 recommendations. Diagnoses and treatment for [sic] include male and female reproductive
11 disorders, male and female urinary tract dysfunction, prostate cancer screening and male birth
12 control (vasectomy) etc."

13 17. Inspector Caballero spoke with Respondent's practice monitor and received her
14 report. As it appeared that the monitor was reporting on Dr. B's medical practice and not
15 Respondent's, on March 26, 2018, Inspector Caballero made an unannounced visit to Dr. B's
16 Novato practice. At that time, Dr. B stated that Respondent's role in his medical practice was
17 strictly as an observer. In a letter dated March 27, 2018, Dr. B stated, "...Dr. Katz joins me at my
18 Novato office on Monday mornings in order to observe my urology practice. He does so in a
19 capacity that any other observer, such as a medical or nursing student or a visiting colleague,
20 would. I introduce Dr. Katz as a colleague, and I obtain from each patient verbal permission for
21 Dr. Katz to observe our encounter. I alone interview and examine the patient, and I alone perform
22 the documentation and coding for the encounter. In his capacity as an observer at my office, Dr.
23 Katz is not practicing medicine and I am not supervising him."

24 18. On April 5, 2018, Respondent emailed Inspector Caballero and asked her to "resign
25 as my probation monitor." Respondent complained about Inspector Caballero's "overly
26 aggressive behavior" toward him, Dr. B and his practice monitor.

27 ² The Quarterly Declaration dated June 28 and July 21, 2018 (apparently Respondent
28 resubmitted this document at Inspector Caballero's request) inserted the word "approximately"
over the representation that Respondent worked 40 hours per month.

19. On June 20, 2018, Dr. B was interviewed. Dr. B confirmed that Respondent came to his office on Monday mornings from approximately 8:30 a.m. until 11:45, for an average of approximately 14 hours per month. Respondent's role was limited to observing Dr. B's medical practice. Respondent did not diagnose or treat patients, did not formulate treatment plans and did not examine patients. He did not act as a consultant, and did nothing that required a medical license.

CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Dishonesty)

20. Respondent's conduct as set forth in paragraphs 6-19 constitutes unprofessional conduct, dishonest acts, and knowingly signing a certificate or document directly or indirectly related to the practice of medicine which falsely represents the existence or nonexistence of a state of facts, and is cause for discipline pursuant to sections 2234, and/or 2234(e), and/or 2261 of the Code in that:

a. Respondent repeatedly represented to the Board, verbally and in writing that he was practicing medicine, when in fact he was merely observing another physician practice.

b. Respondent repeatedly represented that he was practicing medicine at least 40 hours per month, when he was in fact practicing less than 20 hours per month.

CAUSE TO REVOKE PROBATION

(Non-Practice While on Probation)

21. Respondent's probation is subject to revocation because he failed to comply with Probation Condition number 12, "Non-practice while on Probation", in that he has not practiced medicine at least 40 hours per month since the inception of his probation in April 2015.

DISCIPLINARY CONSIDERATIONS

22. Respondent's physician's and surgeon's certificate was revoked in 2005 based on findings of egregious misconduct involving deceit and dishonesty. The Board reinstated Respondent's certificate in 2015 based on explicit assurances from Respondent, his psychotherapist, and various other witnesses that Respondent fully understood the importance of honesty and candor in his professional dealings. Respondent's certificate was reinstated with the

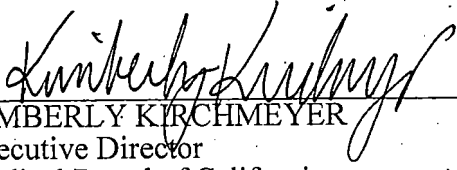
1 clear understanding and expectation that he would never in the future engage in and/or deceitful
2 unprofessional conduct, and certainly that he would candidly and truthfully deal with the Board's
3 probation staff.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Medical Board of California issue a decision:

- 7 1. Revoking the probation that was granted by the Medical Board of California in Case
8 No. 27-2013-233819 and imposing the disciplinary order that was stayed thereby revoking
9 Physician's and Surgeon's Certificate No. G 71332 issued to Steven Lawrence Katz, M.D.;
- 10 2. Revoking or suspending Physician's and Surgeon's Certificate No. G 71332, issued to
11 Steven Lawrence Katz, M.D.;
- 12 3. Revoking, suspending or denying approval of Steven Lawrence Katz, M.D.'s
13 authority to supervise physician's assistants and advanced practice nurses
- 14 4. Ordering Steven Lawrence Katz, M.D. to pay the Medical Board of California, if
15 placed on probation, the costs of probation monitoring;
- 16 5. Taking such other and further action as deemed necessary and proper.

17 DATED: September 25, 2018

18 
KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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23 SF2018201181
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28

Exhibit A

Decision and Order

Medical Board of California Case No. 27-2013-233819

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement Against:

Steven Lawrence Katz

Physician's and Surgeon's
Certificate No. G 71332

Respondent

Case No. 27-2013-233819.

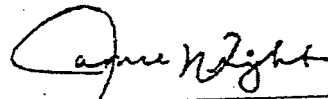
DECISION

The attached Decision is hereby adopted as the Decision and Order of the
Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 9, 2015.

IT IS SO ORDERED: March 10, 2015.

MEDICAL BOARD OF CALIFORNIA



Jamie Wright, Esq., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

STEVEN L. KATZ,

Petitioner.

Case No. 27-2013-233819

OAH No. 2014080485

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, on January 8, 2015, in Oakland, California.

Petitioner Steven L. Katz was present and was represented by Brock D. Phillips and Greg Abrams, Attorneys at Law.

The Department of Justice, Office of the Attorney General, was represented by Lawrence Mercer and Joshua Templet, Deputy Attorneys General.

The matter was submitted for decision on January 8, 2015.

SUMMARY

Steven L. Katz's physician's and surgeon's certificate was revoked in 2005. In 2013, he filed this petition for reinstatement. Petitioner clearly and convincingly demonstrated that he has rehabilitated himself to the extent that it would not be against the public interest to permit him to resume the practice of medicine upon appropriate probationary terms and conditions. His petition is granted.

FACTUAL FINDINGS

Background

1. The Medical Board of California issued petitioner Steven L. Katz physician's and surgeon's certificate number G-71332 on May 13, 1991. In September 2004, the executive director of the board issued an accusation against petitioner alleging that cause to

revoke his license existed pursuant to Business and Professions Code sections 2234, subdivisions (b) and (e), 2261 and 2262 for gross negligence, dishonesty, false statements and false medical records. Following a hearing in January 2005, petitioner's license was revoked by a board decision effective April 27, 2005. The board found that petitioner was grossly negligent for failing to advise two patients of a medical error, for actively concealing the error from the patients, and for failing to obtain their informed consent to his continued medical care; that petitioner altered or modified patient medical records, or created false records, with fraudulent intent; and that his actions constituted dishonesty and corruption.

2. As reflected in the board's decision, the underlying circumstances are these:

Petitioner specialized in endocrinology and fertility. On June 15, 2000, petitioner mistakenly transferred three of patient D.B.'s fresh embryos into patient S.B. Within ten minutes, petitioner learned of the mistake. He decided not to inform S.B. of the error and instead gave S.B. four or five birth control pills as a "morning after pill" in an attempt to prevent her from becoming pregnant. (Although petitioner's giving S.B. birth control pills was neither specifically charged nor found to constitute gross negligence or dishonesty or corruption, it was a significant point in the board's decision and maintains significance today.) Petitioner did not document the transfer error in S.B.'s medical records.

Patient D.B. was scheduled for the transfer of three of her fresh embryos just a half hour after S.B.'s transfer. Petitioner did not tell D.B. that her fresh embryos had mistakenly been implanted in S.B. Because her fresh embryos were no longer available, petitioner instead implanted three of D.B.'s stored frozen embryos. He did not tell the patient he had done this. Petitioner did not document in D.B.'s medical records the implantation of frozen, rather than fresh, embryos.

Petitioner subsequently engaged in a cover-up of his error, which included misleading his office staff about what had occurred, that continued until December 2001—ten months after S.B. had given birth to a boy and D.B. to a girl. Petitioner finally admitted to the patients what had happened after the board began an investigation and contacted S.B., who then called petitioner with her concerns. Patient D.B. and her husband, regarding the boy as their own son, began a costly legal battle with patient S.B. to resolve their mutual claims to the child. D.B.'s husband was granted visitation rights with the boy. D.B. and her husband moved from Del Norte County to the San Francisco area to be closer to the boy. This resulted in financial and other hardships.

Petitions for Reinstatement

3. On July 19, 2013, petitioner filed this petition for reinstatement of his certificate. This is petitioner's second such filing. He filed his first petition for reinstatement in June 2008. Following a hearing in November 2009, Administrative Law Judge Ruth S. Astle found that while "[p]etitioner's dishonesty and cover-up were egregious," his "attitude has altered dramatically. He understands that the practice of medicine is built on trust and that he violated that trust in one of the worst ways. He has accepted responsibility for his

actions. Petitioner has been dedicated to his rehabilitation." She found that petitioner had been under the care of Hilary Goldstine, Ph.D., from May 2008 to March 2009, working on issues related to petitioner's misconduct, that petitioner had participated in a two-day clinical evaluation at the Physician Assessment and Clinical Education program and that he had attended various ethics, record-keeping, patient communication and other continuing education courses. Judge Astle concluded that petitioner had "demonstrated that he is sufficiently rehabilitated and fit to practice medicine" under specified probationary terms and conditions.

4. The board declined to adopt Judge Astle's decision. After reviewing the record and additional written argument from the parties, in August 2010 the board issued its own decision. While adopting most of Judge Astle's findings, the board concluded that petitioner had not satisfied his burden of proving rehabilitation. The board found that it was "not persuaded that petitioner has in fact come to grips with his conduct and underlying errors in judgment." The board further found that aside from the course work petitioner had undertaken:

[P]etitioner's rehabilitation is primarily related to spending time with his wife and family volunteering to coach athletic teams and to teach science at his children's school. [These] activities do not constitute rehabilitation as these activities primarily benefit petitioner's family. The [board] is disturbed by the length of time that elapsed between revocation and the first acts of rehabilitation addressing petitioner's lengthy course of concealment of his error – i.e., psychotherapy and ethics.

Finally, the board found, "Given the severity of petitioner's misconduct, more time may be required to establish rehabilitation, including gaining greater insight into why petitioner engaged in a pattern of dishonesty."

Petitioner's Evidence

5. After receiving his undergraduate degree at Cornell University, petitioner attended Cornell University Medical College, graduating in 1989 with a number of honors. He undertook postgraduate residency training in the Department of Obstetrics, Gynecology and Reproductive Sciences at UCSF, serving in his final year there as a chief resident. From 1993 to 1995, petitioner was a fellow in reproductive endocrinology and infertility at UCSF. He was board certified in obstetrics and gynecology in 1996.

For 14 months, until November 1996, petitioner served as a clinical assistant professor at the Oregon Health Sciences University School of Medicine and as director of the university's In Vitro Fertilization Satellite Program in Eugene. Petitioner then returned to the Bay Area and in December 1996 joined California North Bay Fertility Associates, operating offices for the practice in San Francisco and Marin County. He became an assistant clinical professor at the UCSF Medical School in June 1997. In January 1999,

petitioner opened his own practice, Fertility Associates of the Bay Area, taking over the two offices in which he had been practicing. It was in this practice that the events described above in Finding 2 occurred.

6. Both S.B. and D.B. and her husband filed civil suits against petitioner. He tried to settle those suits as early as he could, not wanting to force the patients to trial. S.B. received a settlement from petitioner's malpractice carrier. When the carrier refused to open a second claim for D.B., petitioner sued the carrier to get them to do so. Such a claim was opened and the malpractice carrier also settled with D.B.

7. In the four-plus years since the denial of his first petition for reinstatement, petitioner has sought to address the concerns expressed by the board. He has expanded the scope of his community service and he has engaged in further therapy in an effort to gain even more insight into his dishonest behavior. In addition, petitioner has sought to remain current in the field of infertility by attending professional conferences, reading medical journals, conferring with former colleagues, and continuing to take continuing education classes.

COMMUNITY SERVICE

8. In 2011, petitioner became a mentor with Students Rising Above, a program that matches disadvantaged children with mentors. Petitioner was matched with a high-functioning autistic high school student who had been raised in foster homes and who was interested in science. He has spent time with the student, who is now a junior at UC Berkeley, working with him on social and academic issues. Although petitioner now sees the student only about once every two months, they communicate through text or email messages more frequently.

9. Petitioner also started volunteering at the St. Vincent de Paul Society in San Rafael in 2011. He works Sunday mornings, starting at 6:30, at the soup kitchen. When he began, petitioner was assigned to dish washing, but he is now involved in food preparation. He continues to perform this service and plans to do so as long as he can. In a letter, Jay Karutz, the dining room manager at St. Vincent de Paul states that the 6:30 a.m. Sunday shift petitioner volunteers for is the most difficult to fill. He describes petitioner as one of their most dependable volunteers. Mr. Karutz states that petitioner "shared with me the mistake he made in not disclosing the embryo mistake in 2000," and that petitioner appears "very remorseful about his mistake."

10. After the last petition hearing, petitioner continued to do the community work he described at his prior petition hearing – coaching sports teams and teaching science at his children's school – activities the board found not to constitute rehabilitation.

THERAPY

11. In the decision following the prior petition hearing in November 2009, it was found that petitioner had been under the care of Hilary Goldstine, Ph.D., from May 2008 to March 2009, working on issues related to his misconduct. In this hearing, petitioner explained that he had started working with another therapist earlier – in 2007 – but because that therapist was in Roseville, a 90-minute drive from his home, he switched to Dr. Goldstine. He found his work with Dr. Goldstine very helpful. As described in the prior petition decision, using cognitive behavioral therapy Dr. Goldstine helped petitioner come to terms with his unethical behavior, the “doctor as god” syndrome that may have been used to rationalize his conduct, and how fear could alter a person’s cognitive abilities.

12. Petitioner returned to see Dr. Goldstine in May 2013. He wanted to review everything they had previously discussed and to make sure he “was still on the right track.” He saw Dr. Goldstine 15 times between May 2013 and July 2014 – at first weekly and then with decreasing frequency. Petitioner stated that he again found his work with Dr. Goldstine “ha[d] been immensely helpful.”

13. In her notes from their first session in May 2013, Dr. Goldstine wrote that petitioner “has been working hard to fulfill his rehabilitation”; that he had “much remorse over having made such a terrible mistake with such tragic outcomes”; that “[h]is resilience has been remarkable”; and that “[h]e works on being honest even in situations where others might duck and cover.” In her notes of a session two weeks later, Dr. Goldstine wrote:

He knows the practice of medicine requires disclosure. Mistakes always have to be disclosed. In our work it has been important to be redundant in going over these issues. The therapy is focused on how the mistakes happened and all the events that followed that were his part. He goes over the ethics of medicine and all the ethical principles and believes that the practice of medicine is an honorable trust. [¶] He is committed to acting always with integrity. He goes over that he was and will always have been wrong. Must inform.

14. In her summary of her therapeutic work with petitioner from May 2013 to July 2014, Dr. Goldstine wrote:

I was a presenting witness at the [petition] hearing in 2010 and explained then, as I would now, that [petitioner] has no personality disorder or any other mental disturbance that would impair his judgment. The decisions that he made back in 2000 were a complex mixture of trying to solve a problem created by an embryologist who had mixed up embryos and how [petitioner’s] own ethical standards for the welfare of his patients interacted with this horrible mistake. [Petitioner] made

decisions at that moment that were wrong and he has acknowledged and continues to acknowledge this. For the past 14 years he has had to adjust to his life with the full understanding not only of the vast implications of the mistake but how he has affected so many other people's lives.

15. Petitioner and his wife separated in July 2014. His marital difficulties led petitioner to seek additional therapy with Dr. Ron de Stefano. While his work with Dr. de Stefano initially focused on marital, family and separation issues, it has evolved from there and also touches upon the circumstances of petitioner's mistakes in 2000.

MAINTAINING CURRENCY IN THE AREA OF INFERTILITY MEDICINE

16. Petitioner has sought to remain current in the field of reproductive medicine and endocrinology by taking continuing education courses, reading medical journals, attending professional conferences and conferring with former colleagues. He believes he has successfully kept up with current advances and standards in the practice of infertility.

17. Petitioner regularly reads the medical journals *Fertility and Sterility*, *Human Reproduction*, and *Obstetrics and Gynecology*. Since his last petition hearing in 2009, petitioner has received approximately 265 continuing education credits. Most of these credits come from his attendance at professional meetings. Petitioner has attended meetings of the American College of Obstetricians and Gynecologists and the American Society of Reproductive Medicine around the country. At those meetings, petitioner has had the opportunity to confer with former colleagues, and they often discuss interesting cases. He has also had the opportunity to share the experiences that led to the revocation of his certificate. He has found that his circumstances are well known, and the topic is discussed both formally and informally. While he finds this somewhat embarrassing, he also recognizes that talking about it helps prevent others from making a similar mistake. In fact, petitioner has sought out opportunities to speak about his experience at both national and regional conferences but has been repeatedly turned down – perhaps because he does not have a current medical license.

REFERENCES

18. Gerald P. Wilner, M.D., wrote a letter in support of the petition for reinstatement and testified at the hearing. Dr. Wilner is an OB/GYN who has been in private practice in Marin County for more than 40 years. He has served as both chair of the obstetrics and gynecology department and chief of staff at Marin General Hospital. He has known petitioner since 1996. Prior to the revocation of petitioner's certificate, Dr. Wilner referred patients to him, including a family member. The feedback he got from those patients was almost always that petitioner was "top of the line excellent."

19. Dr. Wilner is very familiar with the circumstances leading to petitioner's revocation – petitioner visited Dr. Wilner's office and described the circumstances to

Dr. Wilner and his associates, and Dr. Wilner later testified on petitioner's behalf at the 2005 hearing. Dr. Wilner has retained both social and business contacts with petitioner (they were both investors in infertility clinics in Hawaii and Arizona) and believes he is an honest man; he has no doubts about petitioner's ethics and honesty. Dr. Wilner believes petitioner's remorse for his action is "sincere and deep" and that he has learned important lessons about disclosure. He feels petitioner would never again make the kind of mistakes he made in 2000. Should petitioner be reinstated and resume infertility practice, Dr. Wilner would have no hesitation in again referring patients to him.

20. Lynn M. Westphal, M.D., wrote a letter on petitioner's behalf. She has known petitioner since they were fellows together at UCSF in 1993. She is currently an associate professor in the Department of Obstetrics and Gynecology at Stanford University School of Medicine. Dr. Westphal is aware of the circumstances that led to the revocation of petitioner's certificate. She feels that he has been diligent in his rehabilitative efforts and that he has learned from his mistakes. She fully supports his petition for reinstatement.

FUTURE PLANS

21. If his certificate is restored, petitioner would like to return to clinical practice in infertility. He understands he would likely be prohibited from solo practice and is willing to accept that and any other conditions the board might impose.

Discussion

22. In exercising its licensing and disciplinary functions, protection of the public is the board's highest priority. (Bus. & Prof. Code, §§ 2001.1, 2229, subd. (a).) While secondary to public protection, rehabilitation is also a statutorily-mandated consideration in disciplinary actions. (Bus. & Prof. Code, § 2229, subd. (b).)

23. As the board has said in its prior decisions: "the enormity of [petitioner's] conduct cannot be overstated"; "[h]e made decisions he knew to be unethical and dishonest"; his "dishonesty and cover-up were egregious"; and his actions, "[U]ndermine[d] public confidence and the integrity of the medical profession." In light of that, it is little wonder if the board questions whether petitioner can ever again be trusted. But in considering a petition for reinstatement, the board should not look only to the underlying circumstances that led to revocation, no matter how egregious. It should also consider "petitioner's rehabilitative efforts, general reputation for truth, and professional ability." (Bus. & Prof. Code, § 2307, subd. (e).)

24. As to these latter two factors – general reputation for truth and professional ability – it should be noted that in the same decision that discussed the enormity of petitioner's misconduct, the board also made these findings:

[Petitioner] enjoys an excellent reputation among patients he has helped over the years. There was testimony that he acted

towards them with the highest ethical standards, that he was conscientious, attentive, caring Referring physicians testified that they send patients to [petitioner] despite their knowledge of the mistake because they continue to hold [him] in very high regard. [Petitioner] has a reputation for being highly knowledgeable and accessible and for his willingness to share his knowledge with others. He is described as one who provides superb, caring and thoughtful assistance to his patients.

Petitioner's clinical skills have never been questioned, and there is strong evidence that petitioner is still the same person he was when those comments were made – save for one period of time when he was morally and ethically compromised. Dr. Wilner, who has had a long professional, business and personal relationship with petitioner, has no doubts about his ethics and honesty. Perhaps more importantly, Dr. Goldstine, who spent many hours in therapy with petitioner and may be in the best position to judge the accuracy of petitioner's moral compass stated that petitioner "works on being honest in situations where others might duck and cover," and "is committed to acting always with integrity." She concluded that, "[petitioner] made decisions at that moment that were wrong and he has acknowledged and continues to acknowledge this. For the past 14 years he has had to adjust to his life with the full understanding not only of the vast implications of the mistake but how he has affected so many other people's lives."

25. In the initial petition decision, the board raised concerns about the timing of petitioner's first rehabilitative efforts, including his decision to pursue therapy with Dr. Goldstine in May 2008 – three years after the revocation of his certificate and just a month before he filed his first petition. In argument in this proceeding, the Attorney General has raised similar concerns, pointing out that, "[s]imilar to the timing of his therapy in relation to his previous petition, his most recent therapy session began shortly before the filing of his second Petition for Reinstatement, in May 2013. Petitioner's therapy attendance then decreased in frequency before it was discontinued altogether in July 2014."

26. It is true that the timing of petitioner's visits to Dr. Goldstine could seem a bit suspicious. But petitioner points out that he first started therapy with another therapist in 2007, switching to Dr. Goldstine in May 2008 because of the three-hour round trip to see the first therapist. Thus the gap between revocation and therapy was shorter than the board understood in 2009, and the gap between that therapy and the initial reinstatement petition was longer. Petitioner also points out the number of sessions he had with Dr. Goldstine was in part based upon her view of how much therapy he required. He never failed to follow her advice on the timing of sessions. And considering that petitioner restarted sessions with Dr. Goldstine in May 2013 because he wanted to make sure he "was still on the right track," it is not at all surprising that the knowledge he would soon be filing a new reinstatement petition might have triggered that desire.

Despite the timing issues, it is clear that the sessions with Dr. Goldstine have benefited petitioner and have led him to gain more insight into his dishonest and unethical

behavior in 2000 and 2001. It simply cannot be concluded that more sessions, or earlier ones, would have had even more benefit. Successful therapy does not require a specific number of visits or a specific length of time. And Dr. Goldstine's testimony at the first petition hearing (as reflected in the findings in that decision) and her comments in the notes submitted at this hearing, show that petitioner's work with her was neither window-dressing nor a facile way to cause the board to believe he was truly pursuing rehabilitation. On the contrary, evidence from Dr. Goldstine shows that petitioner's work with her was not only deep, thorough, and meaningful, but that it also resulted in significant insight on petitioner's behalf.

27. Petitioner does not deny covering up his error or creating false medical records. But he steadfastly denies, as he did at the disciplinary hearing, that he gave patient S.B. birth control pills to try to prevent her from becoming pregnant. While he admits he took birth control pills from their bubble packs to give to S.B., he has continually maintained that he then decided otherwise and discarded the pills. Although he respects the decision of the administrative law judge and the board that he had given S.B. birth control pills, he nevertheless continues to deny he did so.

Much has been made of this continued denial. It is argued that this shows petitioner has not fully come to terms with what he did and is not being totally honest – that he has not shown “complete and total contrition.” But petitioner's continued denial does not necessarily demonstrate a failure to fully accept responsibility for his actions, a lack of remorse or ongoing dishonesty. A petitioner's refusal “to acquiesce in a pragmatic confession of guilt” and “to become the fraudulent penitent” when it would be to his advantage to do so may just as well demonstrate good character. (*Hall v. Committee of Bar Examiners* (1979) 3 Cal.3d 730, 744-745.)

28. Asked what he would say to assure the board he would not engage in repeated conduct of the type that resulted in revocation of his certificate, petitioner said, “I'm not a stupid man,” and pointed out that he has “had more than a decade” to try and understand “why I made the decisions I did and how I can avoid making them in the future.” He believes he has gained insight through therapy that will guide his future conduct. And he notes that he has a network of therapists and colleagues upon whom he can rely if he ever has doubts about what course of action to take.

29. Over the last 14 years, petitioner has been severely chastened. He has gained great insight into his misconduct and he has used that insight to his benefit. Since the revocation of his certificate, petitioner may not have always acted exactly in the manner that the board or the Attorney General would have prescribed or liked to have seen, but he has proceeded with rehabilitation according to his own design and needs. Rehabilitation is not one-size-fits-all. There are different roads leading to the same goal. While the one petitioner has chosen may have been slightly different, it cannot be disregarded simply because it did not follow the path the board might have preferred.

30. The evidence presented clearly and convincingly demonstrated that petitioner has rehabilitated himself to the extent that it would not be against the public interest to permit him to resume the practice of medicine upon appropriate probationary terms and conditions.

31. Although petitioner has made strong efforts to keep up with the field of infertility and endocrinology, because he has not practiced in nearly 10 years the probationary conditions should include a clinical evaluation and training program. While petitioner did undergo a clinical evaluation at PACE in 2004 and was found to be competent, the length of time that has passed since that evaluation requires that he now be reevaluated. To that end, as a condition precedent to resuming practice, petitioner shall successfully complete a clinical training program at PACE or the equivalent. (Condition 1, below.) And while petitioner completed the Institute for Medical Quality's two-day professionalism (ethics) program in 2008, unless excused from doing so by the board or its designee as set forth below in paragraph 2 of Condition 2, he shall be required to complete another such program as a condition of probation.

Other conditions of probation must include an independent psychiatric evaluation (Condition 3), a practice monitor (Condition 4), and a prohibition against solo practice (Condition 5). Petitioner completed the PACE medical record-keeping course in 2004. Considering that the false medical records petitioner created related to an ethical violation, rather than lack of understanding of the record-keeping requirements, a repeat of that class is not required.

LEGAL CONCLUSIONS

Petitioner has demonstrated good cause to grant his petition for reinstatement of his certificate in that he has shown that he is sufficiently rehabilitated and fit to practice medicine under the probationary terms and conditions set forth below.

ORDER

The petition of Steven L. Katz is granted. Certificate number G-71332 is reinstated and immediately revoked; however, the revocation is stayed and petitioner is placed on probation to the board for five years upon the following terms and conditions:

1. Clinical Training Program

Within 60 calendar days of the effective date of this decision, petitioner shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine. Petitioner shall successfully complete the program not later than six months after his initial enrollment unless the board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment program comprised of a two-day assessment of petitioner's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to petitioner's area of practice in which petitioner was alleged to be deficient, and at minimum, a 40-hour program of clinical education in the area of practice in which petitioner was alleged to be deficient and which takes into account data obtained from the assessment, decisions, accusations, and any other information that the board or its designee deems relevant. Petitioner shall pay all expenses associated with the clinical training program.

Based on petitioner's performance and test results in the assessment and clinical education, the program will advise the board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with the program's recommendations.

At the completion of any additional educational or clinical training, petitioner shall submit to and pass an examination. Determination as to whether petitioner successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

Petitioner shall not practice medicine until petitioner has successfully completed the program and has been so notified by the board or its designee in writing, except that petitioner may practice in a clinical training program approved by the board or its designee. Petitioner's practice of medicine shall be restricted only to that which is required by the approved training program.

2. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this decision, petitioner shall enroll in a professionalism program that meets the requirement of California Code of Regulations, title 16, section 1358. Petitioner shall participate in and successfully complete that program. Petitioner shall provide any information and documents that the program may deem pertinent. Petitioner shall successfully complete the classroom component of the program not later than six months after his initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the accusation, but prior to the effective date of the decision may, in the sole discretion of the board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the board or its designee had the program been taken after the effective date of this decision.

Petitioner shall submit a certification of successful completion to the board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the decision, whichever is later.

3. Psychiatric Evaluation

Within 30 calendar days of the effective date of this decision, and on whatever periodic basis thereafter may be required by the board or its designee, petitioner shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a board-appointed board certified psychiatrist, who shall consider any information provided by the board or its designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the board or its designee. Psychiatric evaluations conducted prior to the effective date of the decision shall not be accepted towards the fulfillment of this requirement. Petitioner shall pay the cost of all psychiatric evaluations and psychological testing.

Petitioner shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the board or its designee.

4. Monitoring - Practice

Within 30 calendar days of the effective date of this decision, petitioner shall submit to the board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the board, including but not limited to any form of bartering, shall be in petitioner's field of practice, and must agree to serve as petitioner's monitor. Petitioner shall pay all monitoring costs.

The board or its designee shall provide the approved monitor with copies of the decisions and accusation, and a proposed monitoring plan. Within 15

calendar days of receipt of the decisions, accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the decisions and accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the board or its designee.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, petitioner's practice shall be monitored by the approved monitor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If petitioner fails to obtain approval of a monitor within 60 calendar days of the effective date of this decision, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor shall submit a quarterly written report to the board or its designee which includes an evaluation of petitioner's performance, indicating whether petitioner's practices are within the standards of practice of medicine and whether petitioner is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of petitioner to ensure that the monitor submits the quarterly written reports to the board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, petitioner shall, within five calendar days of such resignation or unavailability, submit to the board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If petitioner fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, petitioner may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Petitioner shall participate in the professional enhancement program at petitioner's expense during the term of probation.

5. Solo Practice Prohibition

Petitioner is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where:
1) petitioner merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) petitioner is the sole physician practitioner at that location.

If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this decision, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, petitioner's practice setting changes and petitioner is no longer practicing in a setting in compliance with this decision, petitioner shall notify the board or its designee within five calendar days of the practice setting change. If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

6. Notification

Within seven days of the effective date of this decision, petitioner shall provide a true copy of this decision and accusation to the chief of staff or the chief executive officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the chief executive officer at every insurance carrier which extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

7. Supervision of Physician Assistants

During probation, petitioner is prohibited from supervising physician assistants.

8. Obey All Laws

Petitioner shall obey all federal, state and local laws, and all rules governing the practice of medicine in California. Petitioner shall remain in full compliance with any court ordered criminal probation, payments, and other orders.

9. Quarterly Declarations

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the board, stating whether there has been compliance with all the conditions of probation.

Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

10. General Probation Requirements

Compliance with Probation Unit: Petitioner shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes: Petitioner shall, at all times, keep the board informed of petitioner's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice: Petitioner shall not engage in the practice of medicine in petitioner's or a patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal: Petitioner shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence outside California: Petitioner shall immediately inform the board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

In the event petitioner should leave the State of California to reside or to practice, petitioner shall notify the board or its designee in writing 30 calendar days prior to the dates of departure and return.

11. Interview with the Board or its Designee

Petitioner shall be available in person upon request for interviews either at petitioner's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

12. Non-practice while on Probation

Petitioner shall notify the board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the board. All time spent in an intensive training program which has been approved by the board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or under federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event petitioner's period of non-practice while on probation exceeds 18 calendar months, petitioner shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Petitioner's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

13. Completion of Probation

Petitioner shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's certificate shall be fully restored.

14. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation, or petition to revoke probation, or an interim suspension order is filed against petitioner during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

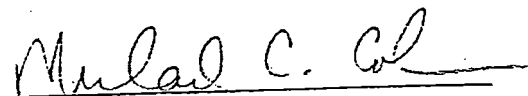
15. License Surrender

Following the effective date of this decision, if petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request to surrender his license. The board reserves the right to evaluate petitioner's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, petitioner shall within 15 calendar days deliver his wallet and wall certificate to the board or its designee and petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16. Probation Monitoring Costs

Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the board or its designee no later than January 31 of each calendar year.

DATED: February 5, 2015


MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings